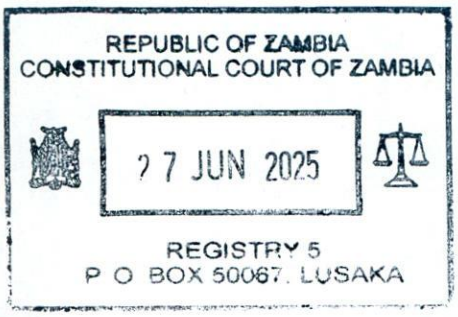
IN THE CONSTITUTIONAL COURT OF ZAMBIA **2025/CCZ/009**
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

IN THE MATTER OF:	**ARTICLE 128 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016**
IN THE MATTER OF:	**THE ALLEGED CONTRAVENTION OF ARTICLE 1 (2), 8, 9, 61, 90, 91, 92 AND 79 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016**
IN THE MATTER OF:	**THE JURISDICTION OF THE CONSTITUTIONAL COURT TO HEAR A MATTER THAT ALLEGES THAT A PROPOSED LAW CONTRAVENES THE CONSTITUTION**
IN THE MATTER OF:	**THE DECISION OF THE CONSTITUTIONAL COURT IN THE CASE OF THE LAW ASSOCIATION OF ZAMBIA V THE ATTORNEY GENERAL 2019/CCZ/0013/0014**
IN THE MATTER OF:	**ARTICLES 1 (2), 8, 9, 61, 90, 91, 92 AND 79 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016**
IN THE MATTER OF:	**THE PER *INCURIAM* DECISION OF THE COURT DATED 30TH JULY, 2020**

BETWEEN:



MUNIR ZULU	**1ST PETITIONER**
CELESTINE MUKANDILA	**2ND PETITIONER**
AND	
ATTORNEY GENERAL	**RESPONDENT**

Coram: Munalula PC, Shilimi DPC, Musaluke, Chisunka, Mulongoti, Mwandenga and Mulife JJC on 11th June, 2025 and 27th June, 2025

For the Petitioners: Mr C. Mwenge and Mr J. Phiri both of Messrs Joseph Chirwa and Company

For the Respondent:Mr M. Muchende,SC Solicitor General, Mr C. Mulonda, Deputy Chief State Advocate, Mrs M.H. Cheelo Senior State Advocate, Mr C. Bwalya, Senior State Advocate and Ms E. Mtonga Acting Senior State Advocate, Attorney General's Chambers.

JUDGMENT

Munalula PC, delivered the judgment of the Majority

Cases referred to:

1. Law Association of Zambia and Chapter one Foundation Limited v The Attorney General 2019/CCZ/0013/0014
2. Michelo Chizombe v Edgar Lungu and Others 2023/CCZ/0021
3. Nkumbula v Attorney General (1972) Z.R. 204
4. Re: Attorney General's Reference (No. 1 of 2001) [2001] UKHL 25
5. Samuel Kaman Macharia and Another v Kenya Commercial Bank Limited and 2 Others [2012] KESC 8 (KLR)
6. Attorney General and Others v David Ndii, Petitions No. 12 with No. 11 and No. 13 of 2021

Legislation referred to

The Constitution of Zambia as amended by the Constitution (Amendment) Act No. 2 of 2016

The Inquiries Act, Chapter 41 of the Laws of Zambia

Works referred to:

Klein, Claude and Andras Sajo (2013) "Constitution-making: Process and Substance" in Michel Rosenfeld and Andras Sajo, The Oxford Handbook of Comparative Constitutional Law, Oxford University Press, pp.419-441

Black's Law Dictionary 8th Edition

Alfred Winstone Chanda, Constitutional Law in Zambia, University of Zambia, Lusaka, 2009

[1] The 1st Petitioner is the former Member of Parliament for Lumezi Constituency while the 2nd Petitioner is the National Youth Chairperson of a political grouping known as the Tonse Alliance. The two Petitioners take issue with the initial phases of the ongoing 2025 Constitution amendment process which they view as unconstitutional and have moved the Court under Article 2 of the Constitution read with Article 128 of the Constitution.

[2] The brief background to the matter is that on 3rd July, 2020, this Court delivered a Judgment in the case of **Law Association of Zambia and Chapter one Foundation Limited v The Attorney General**[1] **(henceforth**

LAZ/Chapter One v AG) wherein the Court was called upon to determine whether the process leading to the tabling before the National Assembly of the Constitution Amendment Bill No. 10 of 2019 contravened various provisions of the Constitution thereby rendering the Bill unconstitutional. The Court dismissed the Petition.

[3] That, on 8th March, 2025, during the commemoration of the International Women's Day, the President of the Republic of Zambia, announced that there was consensus amongst the citizens of Zambia over the need to amend the Constitution. The Minister of Justice, Hon. Princess Kasune, M.P confirmed the President's statement and revealed that a draft of the proposed amendments in the form of a Bill had been prepared for tabling before the National Assembly for deliberation and enactment into law. A ministerial statement was issued by the Minister in the National Assembly on 26th March, 2025 revealing a consultative roadmap for the said Constitution amendment process.

[4] Unhappy with the said pronouncements, the Petitioners filed the petition *in casu* seeking determination of the following questions:

a. **Whether Article 128 as read together with Article 2 of the Constitution limits the powers of the Constitutional Court to examine the constitutionality of a Bill or action taken to amend the Constitution until after the said Bill or action taken materializes and crystalizes into an actual constitutional amendment.**

b. **Whether Article 128 as read together with Article 2 of the Constitution limits the powers of the Constitutional Court to examine the constitutionality of a Bill or action taken to amend the Constitution by virtue of only merely mentioning the word "Bill".**

c. **Whether Article 128 as read with Article 2 of the Constitution allows the Constitutional Court to wait until a Constitution is mutilated before it assumes jurisdiction to prevent that overthrow.**

[5] We wish to say at this juncture that the questions are misplaced as the only issues in a petition are allegations of a contravention of the Constitution. The process of determining the allegations inevitably includes a process of interpreting any constitutional provision whose meaning is unclear. We shall therefore make no further reference to the said questions as we turn to the allegations of contravention in the relief sought.

[6] The Petitioners seek the following relief:

i. **A declaration that the Judgment in the matter of Law Association of Zambia and Chapter one Foundation Limited v The Attorney General (2019/CCZ/0013) (2019/CCZ/0014) was entered per incuriam and therefore null and void and of no effect as the Constitutional Court has power to determine the constitutionality of a Bill or action taken to amend the Constitution;**

ii. **A declaration that the decision by the Respondent to undertake a constitutional amendment process without undertaking wider consultation with the citizens of the Republic of Zambia directly or through their chosen representatives, is in breach of Articles 8 and 9 of the Constitution and thereby unconstitutional;**

iii. **An Order directing the Respondent to undertake wider consultation with the citizens of the Republic of Zambia prior to tabling of a Constitutional Amendment Bill;**

iv. **An Order to estop the Minister of Justice through the Respondent to halt any action or decision until after wider consultation (*sic*);**

v. **An interpretation of Article 128 (1)(a), (3) (b) as read together with Article 2 of the Constitution and if the same limits the jurisdiction of the Constitutional Court to only Acts and/or Statutory Instruments;**

vi. **Costs.**

[7] In our view, the issues raised are closely intertwined. We will therefore deal with them as follows: We will first take a position on the claim that the **LAZ/Chapter One v AG**[1] case was decided *per incuriam* and that we ought to depart from it. Our position on this issue, sets the parameters of the Petitioners claim and determines the trajectory that it takes in relation to the allegation of an unconstitutional amendment process. We begin with the parties' arguments on the **LAZ/Chapter One v AG**[1] case.

[8] The Petitioners contend that the Court has already demonstrated in the case of **Michelo Chizombe v Edgar Lungu and Others**[2] that it has power to depart from its own decisions. That the Constitution amendment process embarked on by the Respondent flies in the face of constitutional provisions and therefore warrants a departure by this Court from its decision in the **LAZ/Chapter One v AG**[1] case. That, the decision in the **LAZ/Chapter One v AG**[1] case was passed *per incuriam* as the Court did not take in to account Article 2 nor the fact that a Constitution amendment Bill must be derived from the consensus of the People of Zambia. That, every person or body including

this Court, has a duty to defend the Constitution as opposed to waiting for it to be altered or overthrown. That it was for this reason that this Court has jurisdiction to examine the constitutionality of any action or Bill.

[9] The Petitioners take comfort in the Country's history, where Constitution review commissions or other bodies such as constituent assemblies were set up to undertake the consultations prior to initiating constitutional amendments. They contend that the United Party for National Development (UPND) conducted a 'sham' consultative process and various societal bodies such as the Law Association of Zambia, had spoken out against the process employed by the Respondent.

[10] The Respondent opposes the Petitioners claims. He contends that the ongoing Constitution amendment process is distinguishable from that in the **LAZ/Chapter One v AG**[1] case as the Bill is yet to be published in the Gazette as required under Article 79 of the Constitution of Zambia. That the position of this Court in that case is the correct position as there is nothing that has been raised by the Petitioners to render it *per incuriam*.

[11] We have considered the issue. We will begin by summing up the decision of this Court in the **LAZ/Chapter One v AG**[1] case. What this Court said in a nutshell was that it has no power to interrogate a Bill to amend the

Constitution as the Court's powers under Article 128 of the Constitution extend only to the process leading to the enactment of an Act of Parliament and to the post enactment period. The Court further said its power to review the process and the enacted amendments relates to whether the process complies with Article 79 of the Constitution, namely the requirements for publication and achievement of a super-majority at both first and second reading in Parliament.

[12] The holding rests on the Court's interpretation of Article 128 (3) (a) and (b) of the Constitution which reads:

> **128. ...**
> **(3) Subject to Article 28, a person who alleges that—**
> **(a) an Act of Parliament or statutory instrument;**
> **(b) an action, measure or decision taken under law;**
> **.....**
> **contravenes this Constitution, may petition the Constitutional Court for redress.**

[13] The Court's reasoning was that a Bill's provisions may not be challenged due to their transient/ provisional nature and the doctrine of separation of powers which requires that Parliament be free to carry out its constitutional mandate as stated in Article 79 of the Constitution.

[14] Our perusal of the facts in the **LAZ/Chapter One v AG**[1] case shows that they are distinguishable from the present facts, for two reasons. First, in that

case, the challenge centred on the constitutionality of a Bill, that is Bill No. 10 of 2019. Secondly, the Petitioners challenged the process leading to the tabling of Bill number 10 which process was encapsulated in the specially enacted National Dialogue Forum Act.

[15] The Bill 10 process was under an Act of Parliament which fell within the ambit of Article 128 (3) (b) of the Constitution. Accordingly, the Court held in paragraph 90 of the **LAZ/Chapter One v AG**[1] case that "... unless it is shown that the process leading up to the tabling of Bill 10 offends the mandatory formalities prescribed in Article 79 of the Constitution, this Court cannot intervene on the basis of Article 128 (3) (b) of the Constitution."

[16] *In casu* there is no amendment Bill before the Court. There is no enabling Act. The allegation relates to the Executive's actions, prior to the publication of Bill No. 7 of 2025 which we take judicial notice of. The allegations therefore relate to the actions of the Executive in initiating a Constitution amendment process alleged to be devoid of broad-based public participation and input. In short, the action impugns the initial pre-Bill stage of the process.

[17] We therefore agree with the Respondent that the **LAZ/Chapter One v AG**[1] case is distinguishable. Having found that the holding in the

LAZ/Chapter One v AG[1] case is not applicable to the facts *in casu*, we see no basis upon which to consider the claim that the decision was made *per incuriam* and that we ought to depart from it. For that reason, the claim is misplaced. It is dismissed.

[18]Further, there is equally no basis upon which we can consider the Petitioners imputation that this Court, in the **LAZ/Chapter One v AG**[1] case, unconstitutionally limited its jurisdiction, effectively curtailing the ability of the People of Zambia under Article 2 of the Constitution to directly protect the Constitution before it is mutilated.

[19] Be that as it may, the concerns about the relationship between Article 2 and Article 128 are important and underpin our consideration of the facts *in casu*. This is because Article 2 of the Constitution is cardinal in protecting the Constitution as it provides for *locus standi* and empowers ordinary persons to defend the Constitution under Article 128 of the Constitution.

[20] Article 2 of the Constitution reads:

> **2. Every person has the right and duty to-**
> **(a) defend this Constitution; and**
> **(b) resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution.**

The Article thus lays down the principle governing the defence and preservation of the Constitution. It makes it an entitlement and a

responsibility for every person to defend the Constitution and resist or prevent its overthrow, suspension or illegal abrogation by any person. It enables the People to directly protect their Constitution. That being the case, it is imperative that the door in Article 2 is not shut on all challenges to the Constitution amendment process.

[21] It follows that, the dismissal of the claim that we should depart from the **LAZ/Chapter One v AG**[1] case does not bring this matter to a close. To the contrary, it clears the path to a proper consideration of the more pointed and fundamental question in issue which is whether the initiation of the Constitution amendment process must come from the People and whether there should be a tangible and visible process of broad-based consultations to support amendments to the Constitution.

[22] We begin our consideration with a brief recital of the parties' arguments on the issue. The Petitioners position is that the proposed constitutional amendments were done without a wide consultative process. They question the manner in which the President exercised executive power in relation to the proposed amendments and allege that the actions go against the spirit of Articles 1(2), 8, 9, 61, 79, 90, 91 and 92 of the Constitution.

[23] The Respondent opposes the allegations and takes refuge in the powers of Parliament and the wide spectrum of persons who can introduce Bills in

Parliament. The gist of the Respondent's answer and affidavit evidence is that it is incorrect for the Petitioners to allege that it has not undertaken a wide consultative and inclusive process as there was no proposed Constitution Amendment Bill at the time that the Petition was filed. That the Petitioners have not explained the type of consultative and inclusive process or the relevant provisions in the Constitution which must precede the drafting of the Bill.

[24] Further, that Article 79 of the Constitution is complete in terms of the special procedural framework required for amending the Constitution as affirmed in the **LAZ/Chapter One v AG**[1] case. That the Petitioners have failed to show how the said Article was contravened. That consultations take place after a Bill has been drafted and published in accordance with Article 79 of the Constitution. More so as the exclusive powers of Parliament to amend the Constitution incorporate a consultation process.

[25] The Respondent contended that among the values and principles provided for in Article 8 of the Constitution is democracy which demands separation of powers. As such Parliament should be left to discharge its constitutional mandate and cannot be stopped by the courts from performing its statutory function. That any challenge should wait until after a law is enacted. That the position of the Constitutional Court in the **LAZ/Chapter**

One v AG[1] case is also a reflection of the position of other courts such as the Court of Appeal in the case of **Nkumbula v Attorney General**[3] and the House of Lords in **Re: Attorney General's Reference.**[4]

[26] As regards the question of whether this Court has jurisdiction to determine the constitutionality of a Bill prior to enactment, the Respondent submitted that this Court can only exercise power that is provided for at law and the Kenyan case of **Samuel Kaman Macharia and Another v Kenya Commercial Bank Limited and 2 Others**[5] was cited in support of this position. That the Court should not intervene in legislative matters until they have crystallised into legal disputes. Further, that Articles 8 and 9 of the Constitution are not justiciable in themselves.

[27] In rebuttal the Petitioners denied the relevance of the **Nkumbula**[3] case, maintaining that the case relates to a challenge to a Bill when they have moved the Court over the initial process preceding the existence of a Bill.

[28] Our consideration of the parties' arguments shows that the parties are at cross purposes. The Petitioners have come on the claim that the omissions in the initial actions relating to the current Constitution amendment process have made the process unconstitutional. This is the question we shall address, not the question whether Article 79 has been complied with which is central to the Respondent's arguments.

[29] In our considered view, the issue of what happens at the pre-Bill stage falls squarely within the ambit of Article 128 (3) (c) of the Constitution. Article 128 (3) (c) reads:

> **128 (3) Subject to Article 28, a person who alleges that—**
> **c) an act, omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.** *(emphasis added)*

In the circumstances, the import of Article 128 (3) (c) of the Constitution is that the initial process and the content of the initial Constitution amendment proposals are subject to challenge by virtue of this provision. Any person seeking to protect the pre-Bill amendment process is at liberty to do so as soon as the process is initiated. The Petitioners are therefore in order to file the petition before us on the basis of Article 128 as read with Article 2 of the Constitution before the Article 79 process ensues.

[30] Our approach to determining the issue before us is premised on the provisions of Article 267 of the Constitution which enjoins us to undertake a holistic and purposive interpretation of the Constitution. Article 267 must thus be read with Article 8 of the Constitution on national values and principles which include democracy, constitutionalism, good governance and integrity. It must also be read with Article 9 of the Constitution which directs that the national values and principles apply to the interpretation of the Constitution,

the enactment and interpretation of the Law, and the development of State policy. We are fortified in doing so by the words of the Kenyan Court in the case of **Attorney General and Others v David Ndii and Others**[6] at paragraph 188, that:

> **...in our constitutional system, a court must take into account the purposive and value-based interpretation decreed by Articles 10, 20(4), 159 and 259(1) of the Constitution. Such an approach to constitutional interpretation begins from and remains rooted in the text of the Constitution whilst interpreting it holistically, giving effect to its values and principles and never losing sight of the historical context and the backdrop of the provisions being interpreted.**

[31] We now turn to the foundation for the position we take. That foundation lies in the nature of a country's Constitution. It goes without saying that the Constitution of a country is rooted in the social contract between the governed and the governors. The People as the constituent power are the direct source of the Constitution and they frame the provisions giving power to the constituted authority - namely, the legislative, executive and judicial arms of Government.

[32] Black's Law Dictionary defines the word 'constituent' to mean 'a person who gives another the authority to act as a representative'; 'a principal who appoints an agent'; 'someone who is represented by a legislator or other elected official'. It also defines 'constituted authority' as the legislative, executive and judicial departments... officially and rightfully governing a

nation... properly appointed or elected under a constitution'. The legislature is given the power to make law. But when it comes to the Constitution, that power is that of amending and not that of framing the amendments.

[33] The People are the owners of the decision to do away with a particular provision and to replace it with another provision. This critical consultative and decision making stage is what gives legitimacy to the constitutional amendments which eventually bind to the Constitution and become one with it. It ensures that the Constitution is properly located as the supreme law of the land with all other laws deriving their authority from it in a normative hierarchy.

[34] We are fortified by the learned authors of **"Constitution-making: Process and Substance" Claude Klein** and **Andras Sajo** who say at page 425 that:

> **Producing a Constitution starts with an initial decision (known as the 'initiative'): Who decides the initiative and what does it mean...The process goes on with a decision on how to position the process *vis a vis* the existing structure ...followed by the choice... for the deliberating body or the draft constitution-preparing body. The process includes also the working technique of that body...Lastly, the question of the final decision or approval appears; approval by the body itself or by a referendum...**

[35] This fundamental understanding of the relationship between the People and the State organs is easily visible and explainable in the text of the Constitution of Zambia, 1991 as amended by the Constitution (Amendment)

Act No. 2 of 2016. Firstly, Article 1 of the Constitution states that the Constitution is the supreme law and any other law which is in conflict with it is null and void. Article 1 of the Constitution further states that all persons, state institutions and state organs are bound by the Constitution and any act or omission in contravention of the Constitution is illegal. Secondly, Article 7 isolates and elevates the Constitution above legislation in categorising the laws of Zambia.

[36] All this makes concrete the exhortations in the preamble to the Constitution to the effect that "We the People of Zambia, direct that all State organs and State institutions abide by and respect our sovereign will". Further that, "The People of Zambia solemnly adopt and give to themselves this Constitution". Through these statements, the People proclaim their constituent power.

[37] 'The 'People' as the source of the Constitution is further consolidated in Article 61 which states that the legislative authority of the Republic derives from the People of Zambia and shall be exercised in a manner that protects the Constitution. Article 62 of the Constitution establishes the Parliament of Zambia and vests it with legislative authority. In Articles 90 and 91 of the Constitution there is established the Executive authority as a derivative or construct of the People of Zambia, with executive authority to be exercised

in a manner compatible with the principles of social justice and for the People's well-being and benefit. Finally, Article 118 of the Constitution directs that the judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.

[38] In addition to Articles 61, 90, 91 and 92 of the Constitution identified by the Petitioners, we have considered Articles 1, 5, 7 and 118 of the Constitution which when read together prove that the constituted organs of the Constitution, institutionally or personally are all bound by the existing text of the Constitution. A change to the text or letter and ultimately the spirit of the Constitution must clearly come from the People.

[39] These provisions are not mere euphemisms but the direct instructions of the People, as the framers of the Constitution, to the State organs and to the State officers/ constitutional functionaries that make them organic. They are all bound to the letter and spirit of the Constitution as provided in Article 1(3) of the Constitution. This means that the Legislature/Executive, are involved in the formal enactment of the Constitution in a limited capacity, as derivatives of the Constitution, given life by the People. As Zambia is under a constitutional democracy, the Executive and the Legislature are always the agents of the People never the principal. They are empowered to represent

the People. In other words, to act on the People's behalf and not to replace them.

[40] We are therefore of the firm view that the power to amend the Constitution as elucidated in Article 79 is formalistic. Article 79 attends to the passing of the amendments and is not the first step in the Constitution amendment process. The first step is the framing of the amendments by the People. So, what does this mean when it comes to the current Constitution amendment process? In our considered view, it means that this Court has the power and the duty to check whether the initial acts which informed the amendment process are in compliance with the relevant provisions of the Constitution.

[41] Unlike the limited review under Article 128 (3) a) and (b) of the Constitution, a review under Article 128 (3) (c) of the Constitution is open. It caters for any decisions or actions that do not stem from a piece of legislation or regulation. Review of the decisions or actions is not limited in scope by the procedure in Article 79 of the Constitution nor does it exclude the substance of proposed amendments. The Constitution has placed no limits on the Court's power of review under Article 128 (3) (c) of the Constitution.

[42] Having set out the premise upon which we considered the petition, we now turn to the evidence led by the parties. The record shows that the

Petitioners evidence of the impugned Constitution amendment process consists of three videos marked exhibit MZCM 1, 2 and 4. They also exhibited a statement from the Law Association of Zambia and the impugned Ministerial statement marked MZCM 3 and 5 respectively. The Respondent exhibited a statement by the Democratic Party in support of the proposed Constitution amendments as MDK1, the Report of the Parliamentary Select Committee appointed to scrutinise Bill No. 10 of 2019 as MDK2 and the impugned Ministerial statement as MDK3.

[43] There is no evidence on record of any process involving a structured engagement with the general public leading to the articulation of the proposals in the impugned Ministerial statement exhibited. Equally there is no evidence on record of any submissions proposing the changes announced in the Ministerial statement. Neither is there any evidence of the appointment of an independent entity to facilitate the initial consultations and garner the required consensus. To the contrary, the Ministerial statement shows that the source of the proposals in the said statement is the Respondent. This is disturbing and a look at one of the proposals in the Ministerial statement shows why.

[44] One of the proposed amendments is a delimitation process which will create an unknown number of new constituencies. Article 58(7) of the

Constitution provides for a special mechanism to protect the Constitution in the event of a delimitation process. It provides that any person may apply to the Constitutional Court for a review of the decision of the Electoral Commission of Zambia (ECZ). This entails that the People have a say in the decision of the ECZ on the delimitation of constituencies and wards before they come into effect. The contestation of multiple constituencies created without the People's expressed wishes is a recipe for the kind of confusion and chaos we are duty bound to guard against. More so given the proximity to the 2026 elections.

[45] A structured and wide consultative process at inception is evident in the unique constitutional history and development of this country. We take judicial notice that past attempted or successful Constitution amendment processes have been conducted by independent / expert bodies and that their output consisted of public documentation of the consultation process such as a green paper or constitutional review commission report complete with intended draft provisions.

[46] Professor Alfred Chanda in his seminal work, **Constitutional Law in Zambia,** notes at pages 10 -12 that since the Independence Constitution, that is the 1964 Zambia Independence Order in Council, constitution making in Zambia has been led by bodies appointed under the Inquiries Act, Chapter

41 of the Laws of Zambia namely, the Chona Commission of Inquiry (1973 Constitution); the Mvunga Constitution Review Commission (1991 Constitution) and the Mwanakatwe Constitution Review Commission (1996 amendments). According to Professor Chanda the 1996 amendment lacked popular legitimacy because the Government rejected most of the People's recommendations which fuelled a deep constitutional crisis in the nation. He states at page 11 that:

> **Experience has so far shown that the constitutions that have been enacted have so far been largely rejected by most Zambians because of lacking constitutional legitimacy. This is primarily because the Inquiries Act (that establishes a "Commission of Inquiry") gives government the powers to reject or accept people's recommendations and make any modifications that government desires through a document commonly referred to as the government "white paper".**

[47] He further observes that the 2005 Mungomba Constitutional Review Commission which finally came up with a progressive People driven draft Constitution recommended that it be adopted by a constituent assembly in order to protect its content. However due to lack of political will the constituent assembly was not constituted and instead the National Constitutional Conference was set up in 2008 as the best mode for adopting the Constitution. It too floundered. It was not until 2012 that the Mungomba draft Constitution was finally brought to fruition through the appointment, by the then incumbent President (using his constitutional appointing power), of

a committee of experts known as 'The Technical Committee Drafting the Zambian Constitution' (TCDZC).

[48] Following established practice of initial wide consultations, the Constitution was last amended in 2016. The amendments were based on a clear and well documented process as evidenced by the First and Second Draft Report of the TCDZC dated 2012 and 2013 respectively. The TCDZC, consulted widely at district, provincial, and national levels. They also held a special convention for experts.

[49] In our considered view the formalised wide consultations that normally take place before a Constitution amendment process in this country acknowledge the inherent nature of the People's constituent power. The power as actualised in the provisions we have identified is not legislated by Parliament because it is an inherent power. Thus, wide public consultations are the norm, routinely facilitated by the Executive as part of a true national custom. The public expect nothing less and departure therefrom would create uncertainty and confusion as well as weaken the constitutional mechanisms designed to protect the Constitution.

[50] More importantly these processes are the source of the Constitution. To demonstrate, the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016, our current Constitution, was

birthed by the initial process led by the TCDZC. It was this process, not the subsequent process under Article 79 of the Constitution, that framed the amendments that became the current Constitution and their legality and legitimacy have never been in doubt despite the absence of a specific constitutional provision.

[51] In our considered view the TCDZC process should be replicated or something of similar magnitude pursued in initiating constitution amendments. It constitutes what we understand to be the wide consultative process necessary to alter the existing content of the Constitution. State actors should be facilitators of a people driven process led by an independent committee of experts which should collect views directly from the people and existing records of submissions by the People. Only after these proposals are put to the People in a structured manner such as through district, provincial and national level discussion and adoption can they be put through the process in Article 79 of the Constitution.

[52] As the custodian of the Constitution, we take cognizance of the importance of our decision in this matter as it is critical for protecting the Constitution in its current form and spirit. As the fulcrum of the legal system, the Constitution is not only expected to stand the test of time but enjoy the legality, legitimacy and public trust needed to ensure its acceptance.

[53] In our considered view, a process which seeks to amend the Constitution in the absence of evidence of a consensus following wide consultations with the People cannot promote democracy, good governance and constitutionalism as espoused in the Constitution. We opine that the critical point for reaching that consensus is at the initiating stage of the amendment process.

[54] We have noted the Respondent's argument that the proposed amendments relate to non-contentious issues. We are not convinced. More so as even so called non-contentious issues can change the Constitution fundamentally. The only way to properly protect the Constitution is to take every amendment process through a wide consultative process with the People, at inception.

[55] Having considered the Constitution as a whole, in particular Articles 1,2, 5,7,8,9,61,90,91,92 and 118, we have come to the inescapable conclusion that the Constitution amendment process cannot be initiated without the participation of the People of Zambia through wide consultations. In the absence of any evidence that the initial process undertaken by the Respondent meets the expectations of wide consultations with the People as stated above, we are of the firm view that the initiating process lacks legitimacy.

[56] Accordingly, we grant the following relief:

1. We declare that the decision by the Respondent to initiate a Constitution amendment process before undertaking wide consultations with the People goes against the spirit of Articles 1, 2, 5, 7, 8, 9, 61, 90, 91 and 92 of the Constitution.

2. We order that the Respondent complies with the spirit of the Constitution by ensuring a People driven process led by an independent body of experts in conducting wide consultations with the People.

3. Each party is to bear their own costs.

M.M. Munalula (JSD)
Constitutional Court President

M. Musaluke
Constitutional Court Judge

M.K. Chisunka
Constitutional Court Judge

J.Z. Mulongoti
Constitutional Court Judge

DISSENTING JUDGMENT

Mulife JC, delivered the minority decision of the Court.

Cases referred to:

1. Law Association of Zambia and Chapter One Foundation Limited v Attorney General, 2019/CCZ/0013/0014
2. Bongopi v Chairman of the Council of State, Ciskei, 1992 3 SA 250 (CkG)
3. Isaac Mwanza and Maurice v The Attorney General, 2023/CCZ/0054
4. Sean Tembo v Attorney General, 2023/CCZ/0014

Legislation referred to:

1. The Constitution of Zambia, Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment)Act No. 2 of 2016
2. The Constitution of Zambia, Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment)Act No. 18 of 1996
3. Constitution of Zambia as repealed by Act No. 27 of 1973
4. The 1993 Constitution of Lesotho
5. The 1991 Constitution of Malawi
6. The 1995 Constitution of Uganda
7. The 2010 Constitution of Kenya
8. The Inquiries Act, Chapter 41 of the Laws of Zambia
9. The National Constitutional Conference Act, No. 19 of 2007
10. The National Dialogue Forum Act, No. 1 of 2019

Works referred to:

1. Hatchard, J, et al (2004). Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective. New York: Cambridge University Free State.

[57] We agree with the majority regarding the factual matrix of the petition and the parties' arguments in support of their respective positions. For this reason, these aspects shall not be recited except to underscore that the petition was triggered by a public declaration of intent made by the President of the Republic of Zambia, Mr. Hakainde Hichilema, to initiate amendments to the Constitution of Zambia as amended by the Constitution of Zambia Act No. 2 of 2016 (Constitution) and, subsequent steps taken by the Minister of Justice, Hon. Princess Kasune, to give effect to the President's said declaration.

[58] The petition is seeking five reliefs as recited in the majority judgment. Four of the said reliefs (reliefs (i) – (iv) are substantive whereas one (relief v – a prayer for costs), is consequential.

[59] We agree and adopt the position of the majority as regards relief (i) that there is no material upon which to declare the **LAZ and Chapter One v AG** [1] case, *per incuriam*. We therefore hold that the case is good law.

[60] We however respectfully do not agree with the majority's position on substantive reliefs (ii) and (iii), hence this dissenting judgment. The said reliefs shall be dealt with together because they essentially raise the same question namely, whether under the Constitution, it

is a precondition for a constitutional amendment process to be preceded by 'wider public consultations', whatever that means as it is neither provided for nor defined in the Constitution or any statute. The majority did not expressly deal with relief iv.

[61] The petition is filed pursuant to Articles 1(2), 8, 9, 61, 90, 91, 92 and 128 of the Constitution. Article 1(2) of the Constitution declares that any act or omission that contravenes the Constitution is illegal. Relevant to the petition, Article 8 of the Constitution lists national values and principles as including good governance and integrity whereas Article 9 of the Constitution directs for the application of the national values and principles to the interpretation of the Constitution as well as enactment and interpretation of the law.

[62] Article 61 of the Constitution provides that the legislative authority of the Republic derives from the people of Zambia and shall be exercised in a manner that protects the Constitution and promotes democratic governance of Zambia. Suffice it to add that by Article 62 of the Constitution, such legislative authority is vested in Parliament which consists of the President and the National Assembly.

[63] Read together and relevant to the petition, Articles 90 – 92 of the Constitution vest the executive authority of the State, in the

President of the Republic of Zambia. Further, that such authority shall be exercised in a manner that respects, upholds and safeguards the Constitution; promotes democracy and enhances the unity of the Nation.

[64] Article 128 of the Constitution is a jurisdictional provision. Relevant to the petition, is Article 128(3)(c) of the Constitution which, subject to Article 28 of the Constitution, empowers a person who alleges that an act, omission, measure or decision by a person or an authority has contravened the Constitution, to petition the Constitutional Court for redress.

[65] Article 128(3) (c) of the Constitution is of particular interest because it appropriately accommodates the events that triggered the petition. Read together with Article 2, Article 128(3) (c) of the Constitution bestows the Petitioners with *locus standi* to institute this petition. We accordingly agree with the majority in asserting jurisdiction over the petition.

[66] Turning to the determination, the majority, found that the question in issue is outside Article 79 but squarely within the ambit of Article 128 (3) (c) of the Constitution. Accordingly, reference was not made to Article 79 of the Constitution in their determination. Reference was only made to Articles 1,2, 5, 7, 118, and 128 (3) (c) of the

Constitution, in addition to the provisions pursuant to which the petition was filed.

[67] We shall not recite the findings in the majority judgment because they have been properly pronounced upon. Suffice it however to highlight that reliefs (ii) and (iii) in the petition were granted and the respondent ordered to conduct wide consultations with the people.

[68] About constitutional consultative entities, seven have thus far been set up between the Independence Constitution (Zambia Independence Act 1964) and the present Constitution. The entities were set up at various intervals by various Republican Presidents, with varying but circumscribed constitutional amendment terms of reference set by the respective appointing President.

[69] The entities are as follows: the Chona Commission, Mvunga Constitutional Review Commission, Mwanakatwe Constitutional Review Commission, Mung'omba Constitutional Review Commission, National Constitutional Conference (NCC), Technical Committee on Drafting the Zambian Constitution (TCDZC), and National Dialogue Forum (NDF). They were set up in 1972, 1991, 1995, 2003, 2007, 2011 and 2019, respectively.

[70] The Chona Commission, Mvunga Constitutional Review Commission, Mwanakatwe Constitutional Review Commission, and

the Mung'omba Constitutional Review Commission, were setup under the Inquiries Act, Chapter 41 of the Laws of Zambia (Inquiries Act).

[71] The NCC was set up under the National Constitutional Conference Act No. 19 of 2007 (NCC Act); the TCDZC was appointed under Articles 33 and 44 the Constitution of Zambia as amended by the Constitution of Zambia Act No. 18 of 1996 whereas the NDF was setup under the National Dialogue Forum Act No. 1 of 2019 (NDF Act).

[72] It must be emphasised that none of these constitutional consultative processes were legally required as a precondition for the various amendments to the Constitution. They were merely set up at the discretion of the Executive arm of government.

[73] Reverting to the determination, we respectfully disagree with the majority's position that the question in issue is outside the ambit of Article 79 of the Constitution. This is because Article 79 of the Constitution is the principal law on constitutional amendments and the question in issue is irrefutably about the correct procedure for amending the Constitution. Accordingly, it is inconceivable how a dispute involving a constitutional amendment can be resolved without examining the governing law for amending the Constitution.

[74] The majority have opined that they disregarded Article 79 of the Constitution because the events which triggered the petition were not yet ripe for the invocation of the provision. We humbly disagree because by our constitutional order (Article 61 of the Constitution), a constitutional amendment process is a legislative process. And, by Article 63 (1) of the Constitution, any legislative process is triggered by a Bill,

[75] Further, by the same Article 63(1) of the Constitution, the procedure for generating any Bill (whether to amend the Constitution or an ordinary statute) is the same. There are no special or separate preconditions for promulgating a constitutional amendment Bill in the Constitution. Had it been a pre-condition for the Executive arm of government to take special steps before promulgating a constitutional amendment Bill, the Constitution could have expressly stated so. We say so against the backdrop that the Constitution is self-executing. Thus, apart from establishing organs of the State and arrogating them powers and functions, it has specifically prescribed the process for its amendment and it could not have omitted such an important procedure.

[76] The difference in the requirements attached to a Bill amending the Constitution and an ordinary statute, arises at enactment stage. This

is in recognition that the Constitution is a superior law as declared in Article 1 of the Constitution. Thus, whereas a Bill to amend an ordinary statute does not require gazetting and can be passed by a majority of the Members of Parliament present and voting (Article 78 (1) of the Constitution), a constitutional amendment Bill attracts a rigorous threshold namely gazetting or subjection to a national referendum, in the event that it involves Part III of the Constitution on the Bill of Rights, and a super majority (not less than two-thirds) of votes of all Members of Parliament in every instance (Article 79 of the Constitution).

[77] In fact, there is no law that mandates 'wider public consultations' as a pre-condition to a constitution amendment process. As such, the earlier mentioned constitutional consultative entities were indeed appointed out of discretion. To this, we wish to add that it is for this reason that the aforementioned constitutional consultative entities were set up under different laws with terms of reference circumscribed by the appointing President. It is further for this reason that public views that were collected were not binding on the Executive or the Legislature and were as a result, at times, disregarded with no effects on the resulting constitutional amendments.

[78] To the contrary, disregarding the steps prescribed by Article 79 of the Constitution is fatal to the resulting amendment as this would properly ground a petition for alleging the contravention of the Constitution.

[79] With the foregoing in mind, we respectfully do not find justification for the majority firstly to have disregarded Article 79 of the Constitution in their determination. And secondly, to order for a process which is not provided by the Constitution or any other law.

[80] We wish to underscore that we are not opposed to 'wider public consultations', in the Constitutional amending process. What we are opposed to is a consideration of a 'wider public consultations' outside Article 79 of the Constitution, as being mandatory.

[81] We shall now examine Article 79 of the Constitution vis-à-vis 'wider public consultations' in the Constitution amendment process.

[82] A brief legislative history of Article 79 of the Constitution is necessary to provide context to our position. The law prior to the enactment of Article 79 of the Constitution, was Article 80 of the Constitution of Zambia as repealed by Act No. 27 of 1973 (1973 Constitution). Article 80 of the 1973 Constitution reposed the power of altering the Constitution in Parliament. It also prescribed a uniform procedure for altering all provisions of the 1973 Constitution including Part III

(Protection of Fundamental Rights and Freedoms of the Individual). Thus firstly, a constitutional amendment Bill had to be published in a Gazette 30 days before its first reading in the National Assembly. And secondly, the amendment Bill had to be supported by at least two-thirds of the Members of the National Assembly during the second and third readings of the Bill.

[83] The provision did not set pre-conditions for generating a constitutional amendment Bill. For ease of reference, relevant portions of the provision are hereunder reproduced:

> **Article 80**
>
> **(1) Subject to the provisions of this Article, Parliament may alter this Constitution of Zambia Act.**
>
> **(2) A bill for an Act of Parliament under this Article shall not be passed unless-**
> **(a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and**
>
> **(b) the bill is supported on second and third reading by the votes of not less than two-thirds of all the members of the Assembly.**

[84] Article 80 of the 1973 Constitution was maintained in the present Article 79 of the Constitution of Zambia, Act No. 1 of 1991. The Article similarly reposed the power of altering the Constitution, in Parliament. It also prescribed the procedure for altering the Constitution. However, unlike Article 80 of the 1973 Constitution,

Article 79 of the Constitution split the alteration procedure into two: one for altering provisions outside Part III of the Constitution and the other for altering Part III of the Constitution and Article 79 of the Constitution. The former procedure was a replica of the repealed Article 80 of the 1973 Constitution. The latter procedure required a constitutional amendment Bill to be subjected to a national referendum, as prescribed by an Act of Parliament.

[85] However, Article 79 of the Constitution similarly did not stipulate pre-conditions for generating a constitutional amendment Bill. As opined already, a constitutional amendment Bill would ordinarily be generated in accordance with Article 63 (1) of the Constitution.

[86] For ease of reference, relevant portions of Article 79 of the Constitution are thus reproduced:

> **Article 79.**
>
> **(1) Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act, 1991.**
>
> **(2) Subject to clause (3) a bill for the alteration of this Constitution or the Constitution of Zambia Act, 1991 shall not be passed unless -**
>
> **(a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and**
>
> **(b) the bill is supported on second and third readings by the votes of not less than two thirds of all the members of the Assembly.**
>
> **(3) A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty per cent of**

persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections.

[87] That said, the pertinent question is whether Article 79 of the Constitution permits public consultation in the constitutional amendment process. We answer the question in the affirmative. Article 79 of the Constitution permits public consultation. For amendments of provisions outside Part III, our reading of the provision is that public consultations commence with the publication of the Bill in the gazette and thereafter through parliamentary processes namely, directly through Parliamentary Select Committee hearings and indirectly through representation by Members of Parliament during the first up until the third reading of the amendment Bill.

[88] For amendments to Part III of the Constitution (Protection of Fundamental Rights and Freedoms of the Individual) and Article 79 of the Constitution, our reading of Article 79 of the Constitution is that public consultations commence with the onset of a national referendum and thereafter through parliamentary processes as in the other case.

[89] **John Hatchard, Muna Ndulo** and **Peter Slinn**, at page 45 of their book entitled **'Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern**

African Perspective state as follows about this constitutional amendment model:

> **The Westminster export model provided for a specifically enhanced parliamentary majority (SEPM) (normally a two-thirds majority of all Members of Parliament) coupled with a requirement to publish the Bill in the Government Gazette not less than thirty days before the final parliamentary vote. This was seemingly based on the view that parliament was the 'guardian of the constitution' and thus best suited to take responsibility for approving constitutional amendments. Although still widely used in the ESA [Eastern and Southern African] states, the SEPM procedure has two major defects. Firstly, practice has shown that legislatures are ill-suited to play a guardianship role. Secondly, it is anomalous that despite the replacement of parliamentary supremacy by the supremacy of the constitution, an exclusively parliamentary process is used to amend the 'supreme law'.**

[90] The said learned authors went on to state as follows at page 48 of their same book:

> **The SEPM procedure's continued popularity is evidenced by its retention in all constitutional amendments in Zimbabwe, Zambia and Kenya, and as part of the amendment process in Lesotho and Malawi. Surprisingly, the constitution-making process in several of these states included little debate on the amendment provisions.**

[91] We agree with John Hatchard, Muna Nduna Ndulo and John Slinn that the amendment model under Article 79 of the Constitution may be defective. This notwithstanding, it is our understanding that it is the model which the People of Zambia through their constitutive power as expressed in the preamble to the Constitution have, at the moment, embraced. The model cannot be altered or disregarded by

this Court through judicial activism and/or purposive interpretation as that would be an unlawful usurpation of legislative power.

[92] In any case, judicial activism and/or the purposive interpretative approach prescribed by Article 267(1) of the Constitution, are not tools to empower courts to alter the Constitution in any manner such as prescribing additional and unlegislated measures. Rather, they are tools to aid courts clarify the Constitution where there is ambiguity. We therefore wish to associate ourselves with the statement of Pickard C., J in the case of **Bongopi v Chairman of the Council of State**[2] at p.265 that:

> **The court ...is not the maker of laws. It will enforce the law as it finds it. To attempt to promote policies that are not found in the law itself or to prescribe what it believes to be the current public attitudes or standards in regard to these policies is not its function.**

[93] Accordingly, we do not subscribe to the view that there is breach of Articles 118, 92, 91, 90, 61, 9, 8, 7, 5, 2 and 1 of the Constitution for the reason that this position is based on factors outside Article 79 of the Constitution, which as we have stated, does not require evidence of prior 'wider public consultations'. Keeping within the spirit of Article 267(1) of the Constitution, no need therefore arises to breathe a purposive approach on clear constitutional provisions which can easily be understood from a literal sense. In other words, it is not the Court's role to interpret the Constitution for what it is not

by rewriting or fundamentally changing its meaning, by introducing a non-existent clause on 'wider public consultations', into the Constitution.

[94] We therefore reaffirm our decision in the **LAZ and Chapter One v AG**[1] case that a Constitution amendment challenge can only be properly mounted within the ambit of Article 79 of the Constitution. In that case we stated as follows:

> **As already noted, unless it is shown that the process leading to the tabling of Bill No. 10, offends the mandatory formalities prescribed in Article 79, this Court cannot intervene on the basis of Article 128(3)(b) of the Constitution.**

[95] We take judicial notice of the fact that the act or measure complained of by the Petitioners, has since resulted in the gazetting of Constitutional Amendment Bill No. 7 of 2025 dated 23rd May, 2025 under Gazette Notice No. 539 of 2025 and the tabling of the Bill in the National Assembly by the Minister of Justice on 25th June, 2025. As a consequence thereof, we are of the considered view that this Court's decision in the **Laz and Chapter One v AG**[1] case would apply to this matter because as was held in that case, the Court has no jurisdiction to determine the constitutionality of a Bill. We are alive to the fact that this aspect was not raised by the parties but as a Court, we cannot turn a blind eye to what is obtaining in the country.

[96] As far as we are concerned, the requirement for 'wider public consultations' prior to the generation of a constitutional amendment Bill is not law but a discretionary practice. As such, it cannot, by itself, be a basis for nullifying a constitutional amendment process without proof of contravention of Article 79 of the Constitution.

[97] To underscore the point, the case of **Isaac Mwanza and Maurice Makalu v The Attorney General**[3], comes to the fore. In that case, the petitioners sought a declaration to quash the appointment of twenty Judges to various superior Courts on grounds that there was no prior public advertisement of the vacancies. Therein, this Court dismissed the prayer on grounds that there is no law that mandates for such a procedure. We stated as follows:

> **[73] We note that the above criteria essentially obtains in our jurisdiction in that the qualifications of or requirements for appointment as a judge are outlined in the Constitution and relevant legislation and therefore in the public domain. As regards the requirement for a judicial appointments commission that is recommended in the compendium...this in our jurisdiction is taken care of as the JSC recommends the appointment of judges. In our view, what requires enhancing in terms of transparency for judge appointments are the procedures to be followed when an individual applies or is being considered for appointment. Currently, the process is not outlined anywhere in the Constitution or in the Service Commission Act or in any Act of Parliament as procedure to be followed by the JSC in the recommendation of judges for appointment.**
>
> **[74]...the allegations such as the ones raised by the petitioners can only, in our view, be forestalled by putting in place a transparent procedure that leaves little room for assailing the recommendations made by the JSC. We recommend that the legislature puts a law to that end.**

[98] Further in the case of **Sean Tembo v Attorney General**[4], this Court declined to grant declaratory orders essentially aimed at compelling President Hakainde Hichilema to shift from his private residence into State House. The basis of our decision was that there is no law in Zambia (constitutional or statutory) which compels a sitting President, to take up residence in State House. We stated that:

> **The reliefs being sought in the petition...an order compelling the President to shift to Sate House is not tenable. In any event, there is no law that compels the President to reside at State House...we find that in the absence of any constitutional provision or any other law that compels the president to reside in State House...the alleged constitutional breaches relating to the President's alleged refusal to shift to State House lacks merit and is misconceived.**

[99] Reverting to the present petition, it is trite that where the Legislature is responsible for the process, the constitutional amendment model in Article 79 of the Constitution remains law until Article 79 of the Constitution is amended as was done to Article 80 of the 1973 Constitution where Part III of the Constitution was extricated therefrom and assigned a more stringent amendment procedure.

[100] This legislative approach is recognised in several commonwealth countries in Eastern and Southern Africa. For example, section 196 of the 1991 Constitution of Malawi enacts that any amendment to the 'fundamental principles' or human rights provisions in the Constitution, requires a simple parliamentary majority provided that

the proposed amendment receives the support of the majority of those voting in a national referendum.

[101] Section 85 (3) of the 1993 Constitution of Lesotho provides that a constitutional amendment Bill cannot be submitted to the King for assent unless, between two and six months, after parliamentary approval of the Bill, it is approved in a national referendum.

[102] Chapter 18 of the 1995 Constitution of Uganda provides that the amendment of a fundamental constitutional provision requires approval in a national referendum as well as special parliamentary majority.

[103] Article 256(2) of the 2010 Constitution of Kenya provides that Parliament shall publicise any Bill to amend the Constitution, and facilitate public discussion about the Bill.

[104] We have taken time to highlight the foregoing legislative approaches to demonstrate that the people's direct involvement in constitutional amendment processes are a product of legislative and not judicial prescriptions. Based on the case of **Isaac Mwanza and Maurice Makalu v The Attorney General**[3], we underscore that judicial intervention in circumstances where a weakness or *lacuna* in the law has been identified, is at most a recommendation for amendment of the law. In this case, being an amendment of Article

79 of the Constitution to among others, accommodate prior 'wider public consultations' in future constitutional amendment processes.

[105] In conclusion, we restate that being a constitutional amendment challenge, this petition should have been handled within the ambit of Article 79 of the Constitution since it is the principal and governing law on the subject. And, had the petition been handled within the ambit of Article 79 of the Constitution, it would have been found that the provision had not been contravened.

[106] Further 'wider public consultations' prior to the generation of a constitutional amendment Bill, are a matter of practice. The absence of such consultations, cannot therefore be a basis for nullifying a constitutional amendment process without proof of breach of Article 79 of the Constitution.

[107] Accordingly, we would dismiss the petition and make no order as to costs.

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A. M. Shilimi
Deputy President - Constitutional Court

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M. Z. Mwandenga
Constitutional Court Judge

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K. Mulife
Constitutional Court Judge